

NTSB Order No. EA-5044

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 24th day of June, 2003

Docket NA-40RM

7476A

Because we were reluctant to affirm the finding of personal service in the face of the contradictory documentary accounts about what had transpired during that visit, the Board in Order No. EA-4985 (2002) remanded the case to the law judge to conduct a hearing for the limited purpose of resolving the parties' conflicting statements as to whether the respondent in fact received a copy of the Administrator's order while he was there.

At a hearing convened on October 17, 2002, a different law judge heard testimony from the respondent and witnesses sponsored by the Administrator. In a decision issued on the record on that date, the law judge concluded as follows:

In summary . . . upon an evaluation of the evidence, and making determinations as to credibility, I find that the preponderance of the reliable and credible evidence preponderates in favor of the Complainant, and I specifically find that on October 3, 2001, Respondent was served with a copy of the Administrator's Emergency Order of Revocation (Transcript at 114).¹

In light of that conclusion, no reason appears for not sustaining the original law judge's decision that the appeal respondent filed on November 6, 2001, should not be accepted, as it was filed beyond the time limits applicable to either an emergency (10 days) or a non-emergency appeal (20 days) under our rules of practice.²

¹An excerpt from the hearing transcript containing the law judge's decisional order is attached.

²Our remand order reflected our agreement with the law judge that the respondent had not demonstrated good cause for extending his time to file an appeal from the revocation order.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied; and
2. The December 14, 2001 decision of the law judge rejecting respondent's appeal for untimeliness is affirmed.

ENGLEMAN, Chairman, ROSENKER, Vice Chairman, and GOGLIA, CARMODY, and HEALING, Members of the Board, concurred in the above opinion and order.